

independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required.

The examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the examiner concedes that the subject matter is not independent.

The examiner's requirement for restriction is based upon his holding that the subjects are distinct. That is, as pointed out in Section 802.01, the examiner has held the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

The examiner has held under Section 803 that the claimed inventions are:

are able to support separate patents and they are ... distinct (MPEP Section 806.05-806.05(i)).

The invention is unitary. No restriction should be required.

The claims are not distinct. In both examples given on page 2, section 2, lines 5-13, the examiner has suggested features not as claimed.

As claimed is an independent and necessary part of the restriction requirement. The inventions must be distinct as claimed. MPEP 803.

The invention is unitary and arises from one inventive effort.

Claim 1 as claimed is substantially identical to claim 6. Each element and interconnection of claim 1 as claimed is present as a step in claim 6 as claimed. The same is true in claims 2 and 7. Each of the method claims 2 and 7 is a linking claim which links the method with the apparatus in its corresponding apparatus claim.

MPEP 806 provides that if the inventions are not distinct as claimed, restriction is never proper.

The apparatus as claimed in Group I claims is not distinct from the method as claimed in the Group II claims. For example, the method as claimed in claim 6 (Group II) is not distinct from the apparatus as claimed in claim 1 (Group I).

The examiner's example does not take into account claim 6 in which the method as claimed cannot be used in another materially different apparatus than the apparatus as claimed in claim 1. The examiner's hypothetical example is not correct. Moreover, Section 806.05(h) emphasizes "as claimed" and falls under the cautions of 806 and 806.05. "Where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper. M.P.E.P. 806(c)". In the present case the particular criteria and guidelines of MPEP 803 and 806 must be followed.

The invention is unitary.

The invention is not distinct as claimed.

The invention as claimed results from the same inventive effort.

Restriction should not be required.

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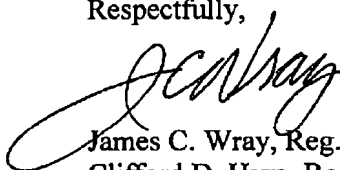
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CONCLUSION

Reconsideration and allowance of the application are respectfully requested.

Reconsideration and withdrawal of the restriction requirements are requested.

Respectfully,



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